



# The

Tampa Bay Bankruptcy Bar Newsletter

Winter 1999

## The President's Message

By Russ Blain

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**'TIS THE SEASON:  
TIME TO LIGHTEN  
UP AND CUT SOME  
SLACK**

**'Tis the Season:  
Time to Lighten  
Up and Cut  
Some Slack**

We in the bankruptcy arena live in a fast-paced, high-pressure environment. Run-of-the-mill adversary proceedings and contested matters in bankruptcy move with the speed of injunctive relief actions in other areas of the law: paper filings are fast; discovery is quick or nonexistent; court calendar time is abbreviated.

Blessed with quick-study judges and flexible calendar clerks, we arrive at justice that is swift and fair. Issues are quickly identified, and settlements are the rule – as they should be – rather than the exception.

But in our effort to obtain funding for a payroll or to retrieve our collateral, do we lose sight of our obligations to fellow counsel that fit within the ambit of professionalism? Former Supreme Court Chief Justice Warren Burger took the bar to task over Rambo-style tactics that he observed. His concerns spawned the American Inns of Court movement that has brought many lawyers, judges, and law students together for fellowship, collegiality, and a heightened awareness of our professional obligations to each other.

Zealousness and advocacy do not equate to rudeness and antagonism. Aggressive representation does not translate into hostility. Truisms, maybe. But when you think about how these concepts relate to day-to-day practice, the line blurs.

Suppose an answer date

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# Supreme Court Chief Justice to Administer Oath to Attorneys at Red Mass

U.S. Supreme Court Chief Justice William H. Rehnquist will be in Tampa on December 11th to attend the annual Red Mass hosted by Bishop Robert N. Lynch. The Red Mass, this year to be held at 4 p.m. at Christ the King Catholic Church, 821 South Dale Mabry Highway, is a tradition dating back to the 13th century in England, when judges, lawyers and government officials attended the special mass in procession at the beginning of each term of the court. The higher judges and the celebrant wore red vestments, hence the popular name, Red Mass.

The mass invokes God's guidance on the deliberation of courts and the endeavors of all members of the legal profession. Justice Rehnquist will administer the oath of attorneys to all lawyers present who wish to reaffirm their oath. Persons of all faiths who are employed in or retired from law-related fields, including state and federal judges, lawyers, elected and appointed government officials and law enforcement personnel, are invited. Following the Red Mass, Justice Rehnquist will speak at the annual dinner of the Tampa Bay Chapter of the Federal Bar Association, to be held at the Hyatt Regency Westshore (on the Courtney Campbell Causeway) at 6 p.m. The cost for the dinner is \$45. For information about the mass, contact Frank Gassler at 813-228-7411 or Cathy McEwen at 813-209-5017; for information about the dinner, contact Mike Hooker at 813-229-3333.

## January Lunch Meeting: Conflict Issue

Mark your calendars now for the January luncheon meeting of the Tampa Bay Bankruptcy Bar Association. It will be a "casual Friday" luncheon. Attendees will receive one hour of ethics CLE credit. The speaker will be Mark D. Yochum, Associate Professor of Law at Duquesne University School of Law. He will be speaking on the topic of **WHEN CONFLICTS BECOME CRIMES: ATTORNEYS REPRESENTING PARTIES IN INTEREST IN BANKRUPTCY**. This fifty minute seminar will explore the regulation of attorneys representing parties in interest in bankruptcy. The Rules of Professional Conduct generally inhibit an attorney's ability to represent clients whose interests are adverse to the lawyer's responsibilities or interests. Conflicts can arise either from the representation of a client with adverse interests or from the adverse interest of the lawyer himself. Conflicts, outside of the bankruptcy context, are waivable by the affected client. The Bankruptcy Code, however, provides a complex overlay to the ordinary rules of professional responsibility, creating conflicts and disclosure obligations that do not exist in ordinary practice. Violation of these rules can lead to disqualification, loss of fees and other sanctions. Worse still, violation of these rules might actually lead to criminal sanctions. The luncheon will be held at the Hyatt Regency downtown Tampa on January 14, 2000 at 12:00 noon. For more information contact: David Tong, Esquire at (813) 224-9000.

### *The President's Message (Continued from page 1)*

passes with no answer or motion to dismiss arriving from the other side, whom you know is represented by counsel. Do you act by rote, seeking the default first and asking questions later?

In a recent conversation, a bright, ethical young lawyer was heard to say, "Well, you do whatever the client says" – a well-intentioned but misguided response. We must be zealous advocates for our clients and ensure that their rights are not prejudiced. At the same time, we are bound to follow local professional courtesies and customs unless we have given notice to opposing counsel of our

intention to do otherwise. A client has no right to demand that a lawyer deviate from recognized local practices and the lawyer should say "no" to the client who asks her to do so, just as the lawyer must refuse to file unfounded and meritless motions even if requested to do so by the client. We are not mere mouthpieces for our clients' causes, but rather champions for their interests. Zealous advocacy does not mean blind adoption of the most aggressive position available.

In that light, the knee-jerk reaction to go for the default deserves a second look. By getting the default, you inevitably put opposing counsel in an awkward position and

# Message From The U.S. Trustee

By: Sara Kistler

## CHAPTER 11 DEBTOR SENTENCED

In the fall edition of *The Cram-Down*, the United States Trustee reported that on July 8, 1999, Kenneth A. Stoecklin was convicted of embezzlement from the bankruptcy estate of Commonweal, Inc. in violation of 18 U.S.C. § 153, and obstruction of the administration of the internal revenue laws, in violation of 26 U.S.C. § 7212.

**Update:** Kenneth A. Stoecklin was sentenced to 24 months incarceration, three years of supervised probation and restitution in the amount of \$199,085.

## CHAPTER 13 DEBTOR INDICTED

On August 19, 1999, a Federal Grand Jury in Tampa, Florida returned a four count indictment against Mark T. Graffy for income tax evasion and bankruptcy fraud. The Indictment sets forth three counts under 26 U.S.C. § 7201 for income tax evasion for the tax years 1993, 1994, and 1995; and one count under 28 U.S.C. § 152 (1) for knowing and fraudulent concealment of property of the estate from creditors and the United States Trustee while under the protection of the Bankruptcy Court.

Mr. Graffy filed three separate chapter 13 bankruptcy cases in the Tampa Division of the Middle District of Florida. In connection with each of the bankruptcy cases, the debtor failed to disclose significant assets, and refused to comply with court orders directing him to file tax returns and remit taxes. In fact, the first two cases were dismissed for failure to comply with the

Court's order to file income tax returns. Although the Bankruptcy Court dismissed the second case "with prejudice," Mr. Graffy commenced a third case on March 31, 1997. On January 16, 1998, after a full trial, the Bankruptcy Court entered an Order dismissing Mr. Graffy's third case with the specific condition that the "Debtor is barred from filing any future bankruptcy case in any jurisdiction which seeks relief from any claim filed by the IRS concerning the Debtor's tax obligations for a period of two years from the date this Order becomes final." Based on evidence adduced at the trial on motions to dismiss the third case, the Court found that (1) the debtor owned assets which were not listed in the bankruptcy schedules; (2) that during any or all of the three bankruptcy cases, the debtor sought to conceal or transfer assets of the estate to a personal trust which should have been listed on the schedules; (3) that the assets and income of the debtor's sole proprietorship were undervalued; and, (4) that the debtor failed to disclose transfers of funds to a third party which occurred during one of the prior bankruptcies.

This matter was referred to the United States Attorney by the United States Trustee, and is scheduled for trial in mid-December, 1999.

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## Clerk's Corner

By Charles G. Kilcoyne

### CASE MANAGEMENT: THE NECESSITY OF THE MASTER MAILING MATRIX

Local Rule 1007-2(a)(1) provides that a master mailing matrix must accompany each petition and that it be in a computer readable format as designated and published from time to time by the Clerk.

This Division averages 1,750 new cases a month. While most attorneys, who generally represent debtors, comply with this rule, we find that far too many diskettes are not being submitted with the petition or are not properly formatted.

The Intake staff hears, numerous time during the day, that "the diskette will be delivered tomorrow." Unfortunately, it usually isn't. In the past, the case manager, after having waited and perhaps called, will then have to input the names and addresses of all creditors into the computer herself/himself.

Based on the volume of cases filed each day, the information to generate the Section 341 Meeting notice must be transmitted to the BNC within a short period of time from the date of filing.

Particular attention should be paid to "computer readable format." We find that a number of diskettes are rejected each day simply because the guidelines for formatting were not followed.

Please make sure your staff is aware of how important a proper diskette is in the administration of any case, from the routine chapter 7 to the mega chapter 11 case, and that it is required to "accompany" the petition, since, in some cases, it is used on the actual day the case is filed.

The most recent memorandum regarding formatting guidelines is dated August 1, 1996, and is available at the Intake section of the office or on our Website ([www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)). If anyone needs assistance in programming, contact me and I will have someone from our automation staff assist you and we will both benefit.

**Lastly, remember, if the case managers spend less time in this area, they will have more time to process such items as orders on fee applications**

## The Eleventh Circuit Selects New Bankruptcy Judge

On October 18, 1999, the Judges of the Eleventh Circuit met and selected a new Bankruptcy Judge to sit in the Tampa Division. The selection is subject to the completion of the FBI and IRS background checks. Once the background checks are completed (this likely will take several months), the new Judge will take the bench in Courtroom 10-B.

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### Additional Copies of the Bankruptcy Seminar For Paralegals and Legal Assistants Notebook can be purchased.

Cost: Member \$25.00 plus \$5.00 shipping and postage Non-Member: \$28.00 plus \$5.00 shipping and postage

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Meininger, Fisher & Mangum, P.A.  
711 N. Florida Ave., Suite 260  
Tampa, FL 33602  
(813) 301-1025  
(813) 307-0879

# People On The Go

**Mark J. Wolfson** has been appointed chairman of the Florida Bar's business law section of the Bankruptcy/Uniform Commercial Code Committee for 1999-2000. He is a partner with Foley & Lardner, supervising the practice group focusing on creditors' rights and bankruptcy.

**Lori V. Vaughan** has joined the Tampa firm of Foley & Lardner as an associate. Ms. Vaughan specializes in creditors' rights and bankruptcy. She received her law degree from the University of Florida College of Law.

**Joryn Jenkins** is now in partnership with J. Benton Stewart, II, and they have relocated their practice to 3839 West Kennedy Boulevard, Tampa, Florida 33609, telephone (813) 354-6446. In addition to her bankruptcy work, they handle professional malpractice and securities fraud matters.

**Amanda (Amy) K. Hill** now practices creditors' rights, bankruptcy, and commercial litigation law with

Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A. in the firm's Tampa office. Ms. Hill graduated, magna cum laude, with a bachelor of science degree in Media Performance from Florida State University in 1996. She received her law degree from the University of Florida College of Law in 1999, where she was a Certified Legal Intern with the Pro Se Clinic.

On October 23, 1999, **Roberta A. Colten** finished the 1999 Chicago Marathon in 4 hours and 32 minutes, after taking a knee-spraining fall. "It sounds like a joke," she said, "but I fell on a banana peel". In addition, Robbie also hit a hole-in-one while golfing on November 11, 1999.

**Contact Donald R. Kirk at (813) 222-2022, (813) 229-8313 (fax) or [dkirk@fowlerwhite.com](mailto:dkirk@fowlerwhite.com) with contributions to the column, including moves, awards or other happenings concerning TBBBA members**

## Calendar of Events

<u>Date</u>	<u>Event</u>	<u>Time</u>	<u>Location</u>
December 9-11, 1999	Stetson University 24th Annual Bankruptcy Seminar		Sheraton Sand Key Clearwater Beach, Florida
December 14, 1999	TBBBA 2nd Annual Holiday Party	5:30 – 8:30	Tampa Downtown Hyatt
January 14, 2000	Employment of Professionals Professor Mark Yochim Duquesne University	12:00 – 1:30	Tampa– Downtown Hyatt
February 8, 2000	TBA Professor Jeff Davis University of Florida	12:00 – 1:30 p.m.	Tampa – Downtown Hyatt
March 14, 2000	A Kinder, Gentler IRS	12:00 – 1:30 p.m.	Tampa – Downtown Hyatt
March 23-25, 2000	26th Annual Southeastern Bankruptcy Law Institute		Atlanta, Georgia
April 11, 2000	Bi-Annual Chapter 13 Seminar Terry Smith, Chapter 13 Trustee	8:30 a.m. – 1:30 p.m.	Tampa-Downtown Hyatt
May 9, 2000	Case Law Update Speaker: TBA	8:30 a.m. – 1:30 p.m.	TBA
May 12, 2000	TBBBA Second Annual Golf Tournament	1:00 p.m. Shotgun Start	Westchase Golf Course
June 2000	TBBBA Annual Dinner	TBA	TBA

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## ***View From The Bench Reception***

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Judge Paskay and Association Members

Judge Paskay, Friends and Honored Guest



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## ***Monthly TBBBA Luncheon***

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Shirley Arcuri  
awarded a certificate  
of appreciation for  
her work to Local  
Bankruptcy Rule  
Committee



Judges Paskay and Corcoran  
commemorate Judge Corcoran's 10th  
anniversary on the Bench



Panel Discussion Relating to Chapter 11 Issues

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# THE TAMPA BAY BANKRUPTCY BAR ASSOCIATION

## 1999 – 2000

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### Officers

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## **The Tampa Bay Bankruptcy Bar Association Committee Chairs 1998 – 1999**

*The Association is looking for volunteers to assist us this coming year. If you are interested in getting more involved with the Association or one of the Standing Committees, please contact anyone of the Association officers or the Chairperson(s) listed below.*

<b><u>Committee</u></b>	<b><u>Chair(s)</u></b>	<b><u>Telephone</u></b>	<b><u>Facsimile</u></b>
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**Seasons Greetings and Best  
Wishes For A Healthy and  
Successful New Year from the  
Officers and Directors of the Tampa  
Bay Bankruptcy Bar Association**

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In that light, the knee-jerk reaction to go for the default deserves a second look. By getting the default, you inevitably put opposing counsel in an awkward position and create an antagonistic and hostile atmosphere that may pervade the entire case. Knowing that defaults are disfavored in the Eleventh Circuit and that the other side has a decent chance of having it set aside, you actually wind up delaying resolution on the merits and quite possibly costing your client more money. Your client may have thought that obtaining the default proved you to be tough. After the default has been set aside, just how tough do you look then, and how has your client benefitted?

So, rejecting a more aggressive tack, you decide to make the courtesy call to opposing counsel. This is not only the decent and professional response but also the practical one: the next missed answer date may be your own, and you may be the one who needs another lawyer to cut you some slack in order to protect your client. In taking the high road, you have served the best interests of your present and future clients.

What about the seemingly simple task of scheduling depositions or Rule 2004 examinations? We all deal with calendar dates over which we have no control. Hearings and trials are scheduled by the court, and client emergencies arise without prior consent. The least we can do is to coordinate the scheduling of discovery, which is supposed to be at the mutual convenience of parties and counsel.

Yet how often do we, in an attempt to get the job done, set a deposition or 2004 without checking with the other side, and then have to wrangle with the opposition or go to court over an out-of-control discovery dispute? (Then, again, maybe you like arguing contentious discovery disputes before overworked bankruptcy judges!)

What about letters to counsel? The client wants toughness and tenacity, so instead of resolving issues head-on over the phone, out flows the ink of the poison pen. We think the client is really impressed by our get-tough letter, when in fact all we're doing is deepening the chasm between the sides, lessening the chance of settlement, making ourselves look unprofessional, and hurting the client's case.

We're lucky to practice in a place where, still, a lawyer's word is her bond, where agreements from opposing counsel to extensions and continuances are the usual course of the day, and where slack is cut from a lawyer to his worthy opponent. This not only results in less stress for all of us but also allows us to be more effective advocates for our clients – in other words, to do our jobs well.

To preserve the collegiality we enjoy takes work and vigilance, starting with common courtesies and the remembrance that we are lawyers – officers of the court – and not hired thugs. Life is too short to live it any other way.

\* \* \*

We, the officers and directors of your Association, wish you and your staff, family, and friends the happiest of holidays and a great Year 2000!

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